IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 10, 2006 Session

E & A NORTHEAST LIMITED PARTNERSHIP v. MUSIC CITY RECORD DISTRIBUTORS, INC.

Appeal from the Chancery Court for Davidson County
No. 04-515-I Claudia Bonnyman, Chancellor

No. M2005-01207-COA-R3-CV - Filed March 21, 2007

The trial court granted summary judgment to a commercial landlord on its claim against a retail tenant for a deficiency in back rental payments. The tenant argues that it is not liable for any deficiency because it alerted the landlord by letter that it planned to reduce its monthly payments after a certain date and the landlord subsequently accepted and cashed a number of rental checks for the reduced amount. On appeal, the tenant argues that its actions served to modify the parties' agreement. In the alternative, the tenant argues that the landlord either waived its rights to the original rental amount or should be estopped from insisting on full payment. We affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

David Zager, Nashville, Tennessee, for the appellant, Music City Record Distributors, Inc.

Alan T. Fister, Brentwood, Tennessee, for the appellee, E & A Northeast Limited Partnership.

OPINION

I. AN AGREEMENT FOR USE OF RETAIL SPACE

Plaintiff E & A Northeast Partnership ("E & A") is a South Carolina firm which manages numerous shopping centers, including one in Memphis named Winchester Court. On March 1, 2001, E & A entered into a written agreement with the defendant, Nashville-based Music City Record Distributors ("Music City") for Music City to rent a 5,080 square foot space in Winchester Court for the operation of a retail store to sell pre-recorded music, videos and related accessories.

The contract provided for a month-to-month rental term with a gross rent of $4,445 per month and set out the duties of the respective parties in regard to insurance, utilities, maintenance of the premises and other relevant matters. Condition 10 of the document stated that "either licensee or licensor may terminate this license agreement by giving the other a sixty (60) day written notice, delivered by registered mail to the respective address listed in 'B,' and 'C' of this document."[1]

Apparently prompted by declining sales of recorded music, Chuck Thatcher, Music City's Director of Store Development, began requesting in the summer of 2002 that E & A reduce its rental rate, but E & A did not show any inclination to agree to such requests. On April 7, 2003, Mr. Thatcher sent a certified letter to E & A complaining of its unresponsiveness, and stating that,

> Mr. Bruce Carlock, owner of Cat's Music /Pop Tunes, has instructed me to notify you Pop Tunes will commence to pay $1,000 each month for base rent beginning May 1, 2003.[2] If Edens & Avant is in agreement, do nothing. If you do not agree to this new rent amount, send Mr. Carlock a notice to vacate by June 30, 2003.

E & A's executives apparently discussed the possibility of offering Music City a slight rent reduction, but decided against it. E & A's property manager instructed one of its employees to inform Music City of its decision, but for reasons that are not clear from the record, no written communication was sent regarding its position. Music City subsequently started paying the reduced rent set out in its letter.[3]

On or about July 16, 2003, E & A's property manager sent Music City a letter which made note of the "incorrect rent payments," and urged Music City to remit a "catch-up payment" and begin paying the correct amount once again. Music City's response of July 28 declared that it "will not pay 'catch-up' for prior rental payments," and all its subsequent rental payments were for the reduced amount.

In a letter sent on August 12, 2003, E & A set forth its position once again, and again requested that the back rent be paid. When no response was forthcoming, E & A retained counsel,

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[1] An unusual feature of the written agreement is that it is not titled as a lease or rental contract, but rather as a "License Agreement for the Use of Vacant Space." A "condition" listed in the agreement is that "[t]his license agreement does not constitute a lease, contract or establish a Landlord-Tenant relationship." Throughout the document, E & A is referred to as "Licensor," and Music City as "Licensee." However, the agreement also refers to "rent to be paid" and "pre-paid rent,"and its terms clearly set out what the law recognizes as a lease or rental contract.

[2] Base rent was only a single component of Music City's monthly rental obligation. Starting May 1, 2003, Music City began paying E & A. $2,587.50 per month, instead of the $4,445.00 set out in the lease.

[3] E & A alleged that one of its agents left Mr. Thatcher a voice message rejecting the April 7 offer. Music City denies that it received such a message. There is no independent evidence in the record to support E & A's allegation. In reviewing E & A's motion for summary judgment, we must view the evidence in the light most favorable to the opponent of the motion; therefore, we will not consider this allegation.

who sent a letter to Music City on November 7, 2003 stating that the reduced payments for the previous six months had resulted in a deficiency of $11,145 to date. The letter concluded:

> This is notice of your material breach of contract. Please remit the amount owed to my office promptly in order to avoid further expenditures of attorney fees and protracted proceedings.
>
> My client reserves all rights and remedies.

Music City did not remit the requested funds. Instead, on November 11, 2003, it sent a letter of termination pursuant to Clause 10 of the lease, giving E & A notice that it would be vacating the premises and terminating the agreement on January 15, 2004. E & A accepted the lease termination. It also sent a certified letter to the tenant on December 31, 2003, accompanied by a statement detailing a rental deficiency in excess of $14,000, and requesting immediate payment of the full amount.

II. TRIAL PROCEEDINGS

On February 18, 2004, E & A filed its complaint for unpaid rent in the Chancery Court of Davidson County. The complaint recited a total deficiency of $15,788.75 from eight and one-half months of underpayment and asked the court to award E & A pre-judgment and post-judgment interest, attorneys fees, and reimbursement of the costs and expenses of litigation. Music City's Answer denied that it owed any money to E & A and set out a number of affirmative defenses, including contentions that E & A had waived enforcement of the original agreement and that E & A's actions estopped it from denying that it had accepted a new agreement.

On October 24, 2004, E & A filed a Motion for Summary Judgment pursuant to Tenn. R. Civ. P. 56. Music City responded with its own Motion for Summary Judgment. Each party filed a Rule 56.03 Statement of Material Facts and a response to the other party's Statement of Material Facts, which taken together showed that there was very little difference between the parties as to the events that had transpired between them, but only as to the legal significance of those events.

The trial court conducted a hearing on the competing motions on January 10, 2005. In its final order, the court discussed the threshold question of whether the License Agreement should be enforced according to its terms or whether it had been effectively modified by the parties' subsequent conduct. The court concluded that no such modification had occurred because there was no "meeting of minds." It further held that even if E & A's actions could be deemed to be an implied consent to a rental reduction, Music City's defenses would still fail for lack of consideration.

The court accordingly held that E & A was entitled to judgment as a matter of law, granted its summary judgment motion, and dismissed Music City's motion. The court awarded E & A the full amount of its rental deficiency claim as well as prejudgment interest at 5% and court costs. Music City then filed a Motion to Alter or Amend the court's judgment. The motion was denied,

and a timely appeal to this court followed. On the subsequent application of Music City, the chancery court granted a stay of judgment pending the result of this appeal. *See* Tenn. R. Civ. P. 62.03.

III. ANALYSIS

A trial court's decision on a motion for summary judgment enjoys no presumption of correctness on appeal. *Draper v. Westerfield*, 181 S.W.3d 283, 288 (Tenn. 2005); *BellSouth Advertising & Publishing Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003); *Scott v. Ashland Healthcare Ctr., Inc.*, 49 S.W.3d 281, 284 (Tenn. 2001); *Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000). We review the summary judgment decision as a question of law. *Finister v. Humboldt Gen. Hosp., Inc*., 970 S.W.2d 435, 437 (Tenn.1998); *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn.1997). Accordingly, this court must review the record *de novo* and make a fresh determination of whether the requirements of Tenn. R. Civ. P. 56 have been met. *Eadie v. Complete Co.*, *Inc*., 142 S.W.3d 288, 291 (Tenn. 2004); *Blair v. West Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004); *Staples v. CBL & Assoc.*, 15 S.W.3d 83, 88 (Tenn. 2000).

The requirements for the grant of summary judgment are that the filings supporting the motion show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; *Blair*, 130 S.W.3d at 764; *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn. 2002); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). Consequently, summary judgment should be granted only when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion - that the party seeking the summary judgment is entitled to a judgment as a matter of law. *Draper*, 181 S.W.3d at 288; *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001); *Brown v. Birman Managed Care, Inc.*, 42 S.W.3d 62, 66 (Tenn. 2001); *Staples*, 15 S.W.3d at 88.

In our review, we must consider the evidence presented at the summary judgment stage in the light most favorable to the non-moving party, and we must afford that party all reasonable inferences. *Draper*, 181 S.W.3d at 288; *Doe v. HCA Health Servs., Inc.*, 46 S.W.3d 191, 196 (Tenn. 2001); *Memphis Hous. Auth. v. Thompson*, 38 S.W.3d 504, 507 (Tenn. 2001). We must determine first whether factual disputes exist and, if so, whether the disputed fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd*, 847 S.W.2d at 214; *Rutherford v. Polar Tank Trailer, Inc.*, 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998). "If there is a dispute as to any material fact or any doubt as to the conclusions to be drawn from that fact, the motion must be denied." *Byrd*, 847 S.W.2d at 211.

The present case can be dealt with in a relatively straightforward way because the parties are in substantial agreement as to the relevant facts. They both agree that the contract executed on March 1, 2001 was valid and that they both performed in accordance with its terms until May 1, 2003. After that date, Music City began paying a lower monthly rental. There is no dispute as to the amount the tenant actually paid, nor as to the amount of its obligation under the original contract. Certain written communications in regard to Music City's rental obligation were entered into the

record, and there is no dispute as to their authenticity. Music City attempts to frame some of its arguments as questions of fact. However, in view of the substantial agreement between the parties as to the material facts, we believe the only issues before this court involve the application of law to those facts. Thus, we must determine whether the trial court erred in holding that the landlord was entitled to judgment as a matter of law.

A. Requirements for Contract Modification

We begin with a basic principle of contract law, that modification of an existing contract requires the consent of both parties; it cannot be accomplished by the unilateral action of one party. *V.L. Nicholson v. Transcon Investment*, 595 S.W.2d 474, 482 (Tenn. 1980); *Harber v. Leader Federal Bank for Savings*, 159 S.W.3d 545, 552 (Tenn. Ct. App. 2004); *Galbreath v. Harris*, 811 S.W.2d 88, 92 (Tenn. Ct. App. 1990). In a breach of contract case the burden rests on the defendant to demonstrate that an existing contract has been modified by mutual assent. *Thompson v. Creswell Industrial Supply, Inc.*, 936 S.W.2d 955, 957 (Tenn. Ct. App. 1996).

The trial court quoted the frequently-cited the case of *Balderacchi v. Ruth*, 256 S.W.3d 390 (Tenn. Ct. App. 1952) which explained the controlling principle as follows:

> Modification of an existing contract cannot be accomplished by the unilateral action of one of the parties. There must be the same mutuality of assent and meeting of minds as required to make a contract. New negotiations cannot affect a completed contract unless they result in a new agreement. And a modification of an existing contract cannot arise from an ambiguous course of dealing between the parties from which diverse inferences might reasonably be drawn as to whether the contract remained in its original form or was changed.

Id., 256 S.W.2d at 391. *See also Teter v. Republic Parking,* 181 S.W.3d 330, 338 (Tenn. 2005); *Thompson v. Creswell*, 936 S.W.2d at 957; *Batson v. Pleasant View Utility District*, 592 S.W.2d 578, 582 (Tenn. Ct. App. 1979).

In the present case, Music City asked E & A to either modify the existing lease agreement or send it a notice to vacate the premises. The agreement gave the tenant the right to terminate the agreement on sixty days notice, but not the right to require the landlord to exercise its own power of termination. Therefore E & A possessed a third option not mentioned in the letter: to reject both of the alternatives presented by Music City.

Music City structured its letter of April 7, 2003 to enable Music City to construe inaction by E & A as acceptance of the contract modification it proposed. However, under general contract law, a party is under no duty to respond to an unsolicited offer, and a contract cannot be formed unless and until the offeree performs some overt act to signify its unequivocal acceptance of the offer. As Professor Corbin declares, "[A]n offeror has no power to cause the silence of the offeree to operate as an acceptance when the offeree does not intend it to do so. . . . An offeror cannot, merely by

saying that the offeree's silence will be taken as an acceptance cause it to be operative as such." Arthur Linton Corbin, 1 CORBIN ON CONTRACTS, § 3.19 (Joseph M. Perillo, ed. 1993).

Music City's April 7 letter attempts to turn this normal understanding of the contracting process on its head by imposing a duty on the landlord to act if it wished to reject the offer, ("If you do not agree to this new rent amount, send Mr. Carlock a notice to vacate by June 30, 2003"), and announcing that it would deem failure to respond to be acceptance. ("If Edens & Avant is in agreement, do nothing."). When E & A failed to promptly respond to Music City's letter, the tenant unilaterally reduced the amount of rent it paid.

Although Music City would have us construe the landlord's failure to respond specifically to its letter as an implied acceptance of the proposed terms, it has offered no authority for the proposition that the landlord was obligated to respond at all, much less that it was required to honor the request by responding within the time frame set out by the tenant. Further, there is absolutely no evidence in the record to suggest that E & A ever agreed to a reduction in rent. To the contrary, E & A re-affirmed its intention to hold Music City to the original terms of the lease in its letter of July 16, 2003, as well as in subsequent letters.[4]

Music City also argues that E & A's acceptance of rental checks for a reduced amount constitutes an implied acceptance of its proposal. We note that the checks did not contain a notation that they were payment for rent in full, or any other notation suggesting the existence of a new contract or an accord and satisfaction. Further, this court's decision in *Balderacchi v. Ruth, supra,* appears to negate the tenant's argument for implied acceptance. In that case, an employer had entered into a written contract to pay his salesman $60 per week. The employer subsequently decided to unilaterally reduce his employee's salary to $50 per week, because of "existing business conditions."

The employee objected, but accepted the reduced payments for six months, after which he was fired for cause. He then sued the employer for underpayment of salary. The court held that his acceptance of a reduced salary for six months did not impair his right to insist upon payment of the full compensation set out in the contract. Similarly, E & A's acceptance of three months worth of checks from Music City in an amount less than the contract provided for did not impair its right to the full contract amount.

Another long-standing principal of contract law discussed by the trial court in the present case is that an alteration or amendment to an existing contract must be supported by consideration. *Dunlop Tire & Rubber Corp. v. Service Merchandise*, 667 S.W.2d 754, 758 (Tenn. Ct. App. 1983).

[4]The trial court noted that it was the landlord's practice to address rental deficiencies in mid-month after a tenant was in arrears thirty or sixty days, and that E & A had changed its property managers in June of 2003, which created an understandable delay.

The trial court held that the lack of any such consideration was an additional obstacle faced by the tenant in its attempt to prove a valid modification of the lease contract.

The trial court cited the case of *Winer v. Williams*, 54 S.W.2d 723 (Tenn. 1932) in which our Supreme Court examined the consideration requirement in the context of a landlord-tenant situation. The Court found that even where a landlord orally agreed to reduce the stipulated monthly rent, and accepted the reduced amount for two years, it could still prevail on a suit to recover the difference between the amount set out in the contract and the amount actually paid. The Court held that an oral release or discharge of a party's obligations under a written contract was void, unless supported by consideration. No consideration was procured for the promised reduction in the *Winer* case, and thus the landlord was found to be entitled to the full amount of rent, despite his agreement to accept less.

Music City refers us to another landlord-tenant case involving a disputed rent reduction, *Haun v. Corkland*, 399 S.W.2d 518 (Tenn. Ct. App. 1965), as authority for the proposition that there was genuine consideration in the present case for the tenant's proposed rent reduction. The *Haun* court ruled in favor of the tenant, reasoning in part that the landlord knew the tenant was in financial difficulties and that it would vacate the property if the landlord did not permit the rent reduction. The court noted that such an outcome would have left the landlord with an empty building that would be difficult to rent, and the prospect of having to go through a long and uncertain legal process to collect on the lease. The court accordingly held the tenant's agreement not to terminate the lease to be valid consideration for the reduction. 399 S.W.2d at 521.[5]

An important principle of contract law is that "[c]onsideration exists when the promisee does something that it is under no legal obligation to do, or refrains from doing something which it has a legal right to do." *Brown Oil Co., Inc. v. Johnson*, 689 S.W.2d 149, 151 (Tenn. 1985); *Pearson v. Garrett Financial Services, Inc.*, 849 S.W.2d 776, 779 (Tenn. Ct. App. 1992). Music City argues that its own forbearance in declining to exercise the termination clause constituted the same sort of consideration as was recognized by this court in *Haun, supra*.

However, the *Haun* case can be distinguished from the case before us in that there was credible evidence that Mr. Haun, the plaintiff landlord, had verbally agreed to lower the rent on his property. Unlike in the present case, there was a factual basis for the tenant's defense that the contract had been validly modified through mutual assent. Thus, even if we were to accept Music City's argument that it proffered some consideration for a rent reduction, the fact that E & A never agreed either explicitly or impliedly to such a reduction would still bar the tenant from prevailing. As the trial court found, there was no meeting of the minds on any modification of the contract, and the landlord is thus entitled to the benefit of the bargain it originally reached with the tenant.

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[5] We note that the *Haun* court found additional consideration for the reduction in rent in the form of a change in the tenant's payment schedule from monthly to weekly. The court noted that "...to constitute a consideration supporting a contract it is not necessary that something concrete or tangible move from one party to another. Any benefit to one and detriment to the other may be a sufficient consideration." 399 S.W.2d at 523.

B. Waiver

Music City presents waiver and estoppel as alternate theories for the proposition that E & A should not be allowed to collect its unpaid rent. Both of these arguments are based on the very same undisputed facts which the court addressed in considering, and ultimately rejecting, the tenant's arguments as to contract modification.

Waiver is an intentional relinquishment of a known right. *Baird v. Fidelity-Phenix Fire Insurance Company*, 162 S.W.2d 384, 388 (Tenn. 1942); *Kentucky National Insurance Co. v. Gardner,* 6 S.W.3d 493, 498 (Tenn. Ct. App. 1999). It may be established either by express declaration or by acts manifesting an intent not to claim the right. *Tennessee Asphalt Company v. Purcell Enterprises, Inc.*, 631 S.W.2d 439, 444 (Tenn. Ct. App. 1982). However, whether the waiver is expressed or implied, it must be intentional. *Hill v. Goodwin*,722 S.W.2d 668, 671 (Tenn. Ct. App. 1986).

Our courts have stated that waiver is proven by a clear, unequivocal and decisive act of the party, showing a purpose to forgo the right or benefit which is waived. *Springfield Tobacco Redryers v. City of Springfield,* 293 S.W.2d 189, 199 (Tenn. 1956); *Collins v. Summers Hardware & Supply*, 88 S.W.3d 192, 201 (Tenn. Ct. App. 2002); *Gitter v. Tennessee Farmers Mutual Insurance Co.*, 450 S.W.2d 780, 784 (Tenn. Ct. App. 1969).

Music City argues that E & A's failure to promptly respond to its letter of April 7, 2003 and its subsequent acceptance of checks for a reduced amount of rent raises an inference that E & A had chosen to waive its right to receive the full rental amount which the contract entitled it to. We note first that the landlord was under no legal duty to respond to the tenant's letter. Thus, although the tenant took the landlord's apparent silence as a sign of acquiescence to its proposal, it was not justified in doing so.

Music City received its first formal notification that E & A intended to enforce the original rental agreement in the landlord's letter of July 16, 2003. According to the unrebutted affidavit of E & A's property manager, the company is involved in the management of over 200 shopping centers. Its normal practice is to address rental deficiencies in mid-month after the tenant is in arrears for thirty or sixty days. The landlord replaced its property manager in June 2003, resulting in a slight delay in the dispatch of the deficiency letter. However, according to the affidavit, the letter was still in conformity with its standard practice, "especially since the Tenant was just short in monthly rent payments instead of ceasing to pay rent altogether."

Although E & A cashed the checks Music City sent, it never suggested that it considered those checks to have fully discharged the tenant's obligation, or that it had acquiesced to the tenant's request for a reduction in its rental obligation. Rather, it consistently expressed its intention to hold the tenant to the original terms of its contract, starting with its deficiency letter of July 16, 2003, followed by letters of August 12, November 7, and December 31. Thus, we do not see how its

conduct can be interpreted as a voluntary relinquishment of a known right, and we reject the tenant's waiver argument.

C. Estoppel

Estoppel is similar to waiver in that both defenses acknowledge the existence of a legal right in the opposing party, but assert that some conduct by that party precludes it from exercising that right. Waiver involves an intentional relinquishment of the right by its holder. Estoppel involves conduct that need not be motivated by such an intention, but which induces the other party to change position to its detriment or injury in reliance on the estopped party's action or statement. *Tennessee Asphalt Company v. Purcell Enterprises, Inc.*, 631 S.W.2d at 444.

The law recognizes several different forms of estoppel, including estoppel by record, estoppel by deed, and equitable estoppel, which is sometimes called estoppel by matter in pais. *Denny v. Wilson County*, 281 S.W.2d 671 (Tenn. 1955); *Duke v. Hopper*, 486 S.W.2d 744 (Tenn. Ct. App. 1972). The type of estoppel invoked by Music City in this case is equitable estoppel.

> Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

Beazley v. Turgeon, 772 S.W.2d 53, 58 (Tenn. Ct. App. 1988) (*quoting Church of Christ v. McDonald,* 171 S.W.2d 817, 821 (Tenn. 1943)).

Music City argues that it relied in good faith on A & E's failure to respond in a timely way to its letter of April 7, 2003 and was led thereby not to terminate the lease as it considered doing. It contends therefore that the landlord should be estopped from asserting its right to the original rental amount.

We note that the conduct Music City complains of does not involve any act committed by E & A, but rather a failure to act, and more specifically a failure to act within a time frame that Music City itself set out. However, "[m]ere delay in asserting a legal right does not of itself work an estoppel." *Johnson v. De Soto Hardwood Flooring Co.*, 67 S.W.2d 143, 144 (Tenn. 1934). *See also Shoaf v. Bringle,* 281 S.W.2d 255, 257 (Tenn. 1955). To give rise to estoppel by silence or inaction, there must be not only an opportunity to speak or act, but also an obligation or duty to do so. *State ex rel. Grant v. Prograis*, 979 S.W.2d 594, 601 (Tenn. Ct. App. 1997); *Hankins v. Waddell*,

167 S.W.2d 694, 696 (Tenn. Ct. App. 1942). As we noted above, Music City's letter did not place E & A under any duty to act.

Estoppels are not favored in the law. *Sturkie v. Bottoms*, 310 S.W.2d 451, 453 (Tenn. 1958) (citing *Rogers v. Colville,* 238 S.W. 80, 83 (Tenn. 1922)). Therefore, one claiming the benefit of an estoppel must proceed with the utmost good faith. *Early v. Street*, 241 S.W.2d 531, 534 (Tenn. 1951); *Fourth National Bank v. Nashville C. & St. L. Railway Co.,* 161 S.W. 1144 (Tenn. 1913); *Strickler v. Garrison,* No. 03A01-9705-CH-00181, 1997 WL 772848, (Tenn. Ct. App., Dec. 11, 1997) at *5(no Tenn. R. App. P. 11 perm. app. filed). Further, the party seeking to evoke the estoppel must carry the burden of proving each and every element. *Third National Bank v. Capitol Records, Inc.*, 445 S.W.2d 471, 476 (Tenn. Ct. App. 1969). These include demonstrating that its reliance on the other party's conduct was reasonable. *Alden v. Presley*, 637 S.W.2d 862, 864 (Tenn. 1982); *Northeast Knox Utility Dist. v. Stanfort Construction Co.,* 206 S.W.3d 454, 461 (Tenn. Ct. App. 2006).

Music City's actions fell short in the area of reasonableness. It was not reasonable for the tenant to rely on the landlord's failure to respond to its letter as the basis for a decision on the future of its lease. Further, after E & A's letter of July 16 showed that it had not agreed to Music City's proposed reduction in rent, Music City's failure to exercise its right to terminate while continuing to pay the reduced rent was not reasonable. Had Music City acted reasonably in response to E & A's July 16 letter, or subsequent letters of similar import, it would not have accrued the total amount of rent arrearage it now owes. Music City terminated the lease only after it became clear that E & A was prepared to resort to the courts to vindicate its rights. We therefore believe the tenant's estoppel argument must fail.

IV.

The order of the trial court is affirmed. Remand this case to the Chancery Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant.

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PATRICIA J. COTTRELL, JUDGE